

Draft

COVENANT DEFERRAL REQUEST FOR THE 4.5 ACRE PARCEL (APPROXIMATELY) UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE U.S. HORTICULTURAL RESEARCH LABORATORY ORLANDO, FLORIDA

1.0 INTRODUCTION

The United States Department of Agriculture, Agricultural Research Service (USDA) has jurisdiction, custody and control of real property located at 2120 Camden Road, City of Orlando, County of Orange, Florida. It consists of approximately 4.5 total acres including easements granted to the City of Orlando and 24 buildings, structures and objects containing approximately 43,236 square feet of space. Since 1952, this site was used primarily as a horticulture research laboratory devoted to the improvement of various horticultural crops, primarily citrus. In April 2001, USDA has declared this property excess to its needs and has reported it to the U.S. General Services Administration (GSA). In accordance with Public Law 107-67, Section 412, the United States Government has been directed to transfer this property to the City of Orlando for park and recreation purposes, under the same terms that the land was deeded to the United States Government.

When a Federal agency transfers to an entity other than another Federal agency real property on which hazardous substances are known to have been released or disposed of or stored for one year or more, the deed must contain a covenant warranting that all remedial action necessary to protect human health and the environment has been taken before the date of transfer. However, for Federal property which has not been listed on the National Priorities List (NPL), section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) [42 U.S.C. 9620(h)(3)(C)] authorizes the Governor of the State to approve the deferral of the covenant requirement, upon the satisfaction of certain enumerated conditions. This property is not listed on the NPL and we believe that it is suitable for transfer.

The purpose of this Covenant Deferral Request is to document the suitability of the proposed property transfer consistent with CERCLA section 120(h)(3)(C) prior to completion of all remedial action. This Request also contains the assurances that will be included in the deed and/or transfer agreement relevant to this purpose.

2.0 DESCRIPTION OF PROPERTY TO BE TRANSFERRED

The Property proposed for transfer consists of approximately 4.5 total acres including easements granted to the City of Orlando and 24 buildings, structures and objects containing approximately 43,236 square feet of space. The property is located in the southwestern quadrant of the intersection of Camden Road and Princeton Street, consisting of Lots 1 through 4 of Block 4 in Section 13 of Township 22 S, Range 29

E in Orange County, Florida. A map showing the boundaries of the Property within the U.S. Horticultural Research Laboratory site is provided in **Enclosure 1**.

Environmental investigation and cleanup activities are continuing on the Property. A remedy will not be in place for all areas of concern on the Property prior to the date of transfer. The interim restrictions as set forth in Section 6.1.4 herein and other provisions of this Covenant Deferral Request will apply to all portions of the Property identified in this Request.

3.0 NATURE AND EXTENT OF CONTAMINATION IMPACTING THE PROPERTY

A comprehensive environmental history of the U.S. Horticultural Research Laboratory can be found in the Environmental Site Assessment reports prepared for USDA by the Department of Health and Human Services, U.S. Public Health Services, Region IV, Division of Federal Occupation Health and Atlanta Environmental Management Incorporated. **Enclosure 2** contains a list of U.S. Horticultural Research Laboratory environmental studies conducted on the 4.5 acres that are the subject of this Covenant Deferral Request. As part of the environmental assessment process, USDA has identified areas on which additional environmental investigation will be performed in cooperation with Florida Department of Environmental Protection (FDEP). In accordance with the Work Plan approved by FDEP, the following items will be addressed:

- Because of potential impacts to soil from storage and use of pesticides and/or other chemicals during past experimental plant trials in greenhouses at the site, confirmatory soil sampling will be performed to determine if pesticide residues at or above Soil Clean-up Target Levels (residential and/or leaching) exist and a remedial action plan will be submitted, if necessary.
- Because of potential impacts to groundwater from storage and use of pesticides and/or other chemicals at the site, and a potential exists for undetected releases of diesel fuel from a closed-in-place underground storage tank, additional groundwater investigation will be conducted and a remedial action plan will be submitted, if necessary.

4.0 ANALYSIS OF EXPECTED FUTURE USE DURING DEFERRAL PERIOD

The City of Orlando plans to utilize the Property for park and recreation purposes. The planned use is reflected in the City of Orlando's Land Use Plan, and will be implemented by a specific plan that will establish land use and zoning regulations on the Property to ensure project compatibility with neighboring land uses, local zoning ordinances, and environmental land use restrictions and covenants.

With the reservations, restrictions, covenants, and controls discussed in sections 6.1 and 6.2, below, the continued investigation, evaluation, and use of the Property for the uses intended by the City of Orlando after transfer of title will not present a reasonable likelihood of exposure to hazardous substances to workers, visitors, and others present at the site.

5.0. RESPONSE, CORRECTIVE ACTION, AND OPERATION AND MAINTENANCE REQUIREMENTS

USDA's environmental investigation and required response actions for hazardous substances at the Property will be coordinated with the Florida Department of Environmental Protection, which is the designated state water pollution control agency for all purposes stated in the Clean Water Act (33 U.S.C. 1251, *et seq.*) and any other Federal statute. The ongoing environmental investigation and possible clean-up of hazardous substances and conditions on the Property after the transfer will be accomplished by USDA or, as appropriate, a third party on behalf of USDA. The Florida Department of Environmental Protection has approved a schedule to determine if any additional response actions may be required [see **Enclosure 3**].

6.0 CONTENTS OF DEED AND TRANSFER AGREEMENT

6.1 Contents of Deed

As required by CERCLA Section 120(h)(1)-(3), the United States shall include the following language in the deed to be provided to the Grantee [the City of Orlando] of the Property. The United States may make minor, non-substantive changes in the language, but shall advise the Florida Department of Environmental Protection of such changes prior to closing.

6.1.1 Notice

NOTICE of Hazardous Substance Activity. Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that [**Enclosure 4**] provides the following information: (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; (2) the time such storage, release or disposal took place; and (3) a description of remedial action taken, if any.

6.1.2 Covenant

Grantor [the United States] warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

(1) This covenant shall not apply:

- (i) in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; OR
- (ii) to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:
 - (A) results in a release or threatened release of a hazardous substance that was not located

on the Property on the date of this conveyance; OR

(B) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

- (2) In the event Grantee, its successor(s) or assign(s), seeks to have Grantor conduct any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, Grantee, its successor(s) or assign(s), shall provide Grantor 45 days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that:
- (i) the associated contamination existed prior to the date of this conveyance; and
 - (ii) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

6.1.3 Access

Grantor reserves a right of access to all portions of the Property for environmental investigation or corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a response action or corrective action is found to be necessary, or in which access is necessary to carry out a response action or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out corrective actions as required or necessary, including but not limited to the installation and operation of monitoring wells and pumping wells, and treatment facilities. Any such entry shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

6.1.4 Reservations, Restrictions, and Covenants.

- (1) The Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property or part thereof, that except for the purposes of groundwater investigation, monitoring, remediation, or treatment, it shall not construct or permit to be constructed any well, and shall not extract, utilize, consume, or permit to be extracted, any water from the aquifers below the surfaces of the ground within the boundary of the Property for the purpose of human consumption, or other use, unless such groundwater has been tested and found to meet State Standards and/or minimum criteria for G-II groundwater quality and such owner or occupant shall first have obtained written approval of the appropriate state regulatory authority. The costs associated with obtaining use of such water, including, but not limited to, the costs of permits, studies, analysis, or remediation, shall be the sole responsibility of the owner, its successors and assigns, without cost whatsoever to the Grantor.

- (2) The Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property or part thereof, that except for the purposes of soil investigation, remediation, or treatment, it shall restrict access to known contaminated subsurface soil such that human exposure is limited. If contaminated subsurface soils are excavated, then proper safety equipment shall be utilized during any work in the area and appropriate testing and proper disposal of the contaminated subsurface soils shall be conducted in accordance with applicable environmental laws and regulations.

6.2 Contents of the Transfer Agreement:

As required by CERCLA Section 120(h)(3)(C)(i)(II), the United States shall include language in the transfer agreement providing assurances that:

- (1) All necessary response actions on the Property will be taken by USDA or, as appropriate, a third party on behalf of USDA in accordance with work plans and schedules approved by the Florida Department of Environmental Protection.
- (2) Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property or part thereof, that a party occupying the Property shall not hinder or prevent USDA from properly constructing, upgrading, operating, maintaining and monitoring any treatment facilities or monitoring network or engage in any activity that will disrupt or hinder required investigations, response or corrective actions or oversight activities on the Property or adjoining property.
- (3) USDA shall submit on an annual basis through established channels, appropriate budget requests to the Director of the Office of Management and Budget that adequately address those agreed upon schedules for further investigation and completion of all necessary response or corrective actions, if any, subject to congressional authorizations and appropriations.
- (4) In accordance with CERCLA Section 120(h)(3)(C)(iii), when all response and corrective action necessary to protect human health and the environment with respect to any substance remaining on the Property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken.

7.0 RESPONSIVENESS SUMMARY

USDA provided public notice of its contemplated use of the Early Transfer Authority and its intent to request approval of a covenant deferral, by publishing a notice in the Orlando Sentinel newspaper, on February 5, 2002. During the public comment period, USDA received comments from the public and regulatory agencies on the draft Covenant Deferral Request. USDA's response to these comments is attached in **Enclosure 5** and incorporated into the final document where appropriate.

[The public comments and USDA's response have not been prepared/obtained at the time of this draft CDR. They will be obtained and provided as separate enclosures to this CDR prior to the final CDR being signed and submitted to the Governor for approval.]

8.0 EFFECT OF COVENANT DEFERRAL REQUEST

Pursuant to CERCLA section 120(h)(3)(C)(iv) [42 U.S.C. § 9620(h)(3)(C)(iv)], nothing in this Covenant Deferral Request shall be construed to alter the obligations of USDA and/or any Potentially Responsible Party to complete all necessary response and corrective actions at the Property as required by applicable environmental laws and regulations and the appropriate regulatory authority.

9.0 SUITABILITY DECLARATION

As the cognizant United States Department of Agriculture official authorized to make such determinations, I, the undersigned, conclude that all United States Department of Agriculture requirements to reach a finding of suitability for early transfer of the Property have been met subject to the prohibitions, restrictions, and covenants discussed in this Covenant Deferral Request and its enclosures.

With the covenants, conditions, and restrictions set forth in this Covenant Deferral Request, the Property can be transferred in its present condition for its intended purposes without unacceptable risk to human health and the environment and without interference with the on-going USDA environmental investigation efforts and any response or corrective actions that may be required.

Date

Lou Gallegos
Assistant Secretary for Administration
United States Department of Agriculture

Enclosures:

1. Legal description and map showing the boundaries of the Property within the U.S. Horticultural Research Station site.
2. List of U.S. Horticultural Research Station environmental studies conducted on subject 4.5 acre site.
3. Action letter from the Florida Department of Environmental Protection, directing USDA to conduct further investigation/remediation at the U.S. Horticultural Research Laboratory.
4. List of the type and quantity of hazardous substances known to have been released, disposed of, or stored for one year or more on the Property; the time these activities took place; and a description of remedial action taken, if any.
5. List of comments received from the public on this Request, and USDA's responses.

Enclosure 1

The following is the legal description from the deed and map.

Block Four (4) of LOCH HAVEN REPLAT, according to
plat thereof as recorded in Plat Book "Q", page 9,
Public Records of Orange County, Florida



Enclosure 2

U.S. Horticultural Research Laboratory Environmental Studies

Environmental Site Assessment Report Phase I

Date Prepared: October 13, 1999

Prepared by: Department of Health and Human Services, U.S. Public Health Services and Atlanta Environmental Management Inc., 2580 Northeast Expressway, NE, Atlanta, Georgia 30345

Environmental Site Assessment Report Phase II

Date Prepared: April 25, 2000

Prepared by: Department of Health and Human Services, U.S. Public Health Services and Atlanta Environmental Management Inc., 2580 Northeast Expressway, NE, Atlanta, Georgia 30345



Jeb Bush
Governor

Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Enclosure 3

David B. Struhs
Secretary

BY ELECTRONIC MAIL

Mr. Robert Serrano
Realty Specialist
USDA-Agricultural Research Service
5601 Sunnyside Ave.
Athens, GA 30604

OCD-WCU-02-

ORANGE COUNTY - WCU

Former USDA, ARS – U.S. Horticultural Research Laboratory
Projected Site Investigation and Remediation Schedule Approval

Dear Mr Serrano:

This letter is to document the agreement between the Florida Department of Environmental Protection (FDEP) and the United States Department of Agriculture, Agriculture Research Service (USDA, ARS) concerning the Projected Site Investigation and Remediation Schedule for the approximate 4 acre site located at 2120 Camden Road, Orlando, Florida. The approved schedule is attached and labeled Attachment A. The USDA, ARS and the FDEP agreed to make every effort to resolve any dispute amiably and expeditiously. However, it was understood that if the USDA, ARS and the FDEP cannot agree upon activities or schedules, the FDEP reserves the right to issue an order.

Thank you for your continuing cooperation and effort on this project. If you have any questions concerning this correspondence, please contact George Houston II, P.G. at (407) 893-3331 or by email at George.Houston@dep.state.fl.us.

Sincerely,

Vivian F. Garfein
Director of District Management
Date: _____

Attachment

VFG/gbl/gh

c: Ms. Laurie Bottswright – City of Orlando – Laurie.Bottswright@cityoforlando.net
Mr. Dan Dashtaki – City of Orlando - Dan.Dashtaki@cityoforlando.net
Mr. Bruce Mayhugh – GSA - Bruce.Mayhugh@gsa.gov

ATTACHMENT A

Projected Site Investigation and Remediation Schedule

- On December 7, 2001 the USDA, ARS submitted a Draft Investigative Work Plan, based on the September 2001 site plan, to the FDEP Central District Office. The purpose of the Work Plan is to 1.) determine the presence or absence of and to define (if present) the full horizontal and vertical extent of soil contamination of chlorinated and organophosphorous pesticides in the greenhouse/shadehouse complex;

2.) Complete closure of the heating oil UST and

3.) Determine if an environmental release may have occurred around the acid neutralization tanks or the storm water retention pond. This plan was reviewed by the FDEP and comments sent on December 28, 2001. USDA will be responding to the FDEP comments and submitting a Final Work Plan by February 4, 2002.

- Following receipt of the Final Work Plan specified above, the FDEP will have the Project Manager review and provide comments to the USDA, ARS within 60 days of submission. The comments will specify any revisions or corrections that are deemed to be necessary.
- Within 45 days of receipt of the FDEP comments the USDA, ARS shall resubmit a revised work plan incorporating the comments provided by the FDEP for final approval.
- Within 30 days of receipt the FDEP shall review and approve or comment on the final work plan.
- Upon approval by FDEP, the USDA,ARS will implement the investigative Work Plan according to mutually agreed upon schedules.
- The USDA,ARS will submit to FDEP all data that is obtained during implementation of the Work Plan. Following receipt and evaluation the FDEP will schedule an assessment conference with the USDA, ARS and the City of Orlando. (The USDA, ARS may elect to conduct this conference by telephone). The FDEP will provide advance notice to enable scheduling of the call with all pertinent parties. The purpose of this conference will be to discuss data collected and to mutually determine any reasonable and necessary further investigation, remedial action and/or long term monitoring and maintenance or "No Further Action" requirements.
- If at, or following the above conference, it is mutually determined that additional investigation, remedial action and/or long term monitoring and maintenance are reasonable and necessary, the USDA, ARS will submit a plan for performing the additional activities.
- Any schedules developed pursuant to the above may be extended by mutual extent.

Enclosure 4

Hazardous Substance Activity Report for USDA,ARS, U.S. Horticulture Laboratory

Based upon a complete search of agency files, the chemicals listed below (classified by EPA in 40 CFR 302 as Acutely Hazardous substances) were stored in excess of the reportable levels at the Orlando Laboratory site between approximately 1957 and 2000. All products listed below were part of the active chemical inventory and were stored onsite in excess of one (1) kilogram total weight. No hazardous substances were stored in excess of 1000 Kg or their reportable quantity for a year or more, and no hazardous substances were released or disposed of at the Property.

Table 1.

Chemical Name	CAS Number	Total Grams on Site/Location Inventory	Date Materials were in ARS Inventory	Required Remedial Activities	EPA P-List Number
Arsenic Trioxide	1327-53-3	1000g	Various	None	P012
Phosphoric Acid	7664-38-2	> 1 Kg	Various	None	P041
Potassium cyanide	151-50-8	1125 g	Various	None	P098
Sodium Azide	26628-22-8	1340 G.	Various	None	P105
Sulfuric acid	7664-93-9	> 1 Kg	Various	None	P115

Based upon a complete search of agency files, there have been no remedial or response actions taken at the property. In coordination with the Florida Department of Environmental Protection (FDEP), USDA is completing a detailed Site Characterization/Investigation to determine if during the application of Pesticides on Horticultural Crops in accordance with label directions any residual product may have accumulated in the soil exceeding any target regulatory standards. Based on findings and direction of FDEP, necessary response actions will be completed.